EXECUTIVE REORGANIZATION

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Report No. 38
To the 43rd Legislative Assembly

MONTANA LEGISLATIVE COUNCIL
State Capitol
Helena, Montana

EXECUTIVE REORGANIZATION

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INTRODUCTION

Section 21 of Article VII of the Montana Constitution was adopted at the general election of November 3, 1970 and mandated the legislature to reorganize the executive branch and reduce the number of executive agencies to a maximum of 20 by July 1, 1973. Pursuant to that mandate, the legislature, in conjunction with the Governor, enacted the appropriate implementing legislation in the 1971 session through the Executive Reorganization Act of 1971 (hereinafter referred to as the Act). Essentially, the legislation created 19 new departments, established a basic structure for the department, defined its duties and functions and provided for gubernatorial activation of each department. (See generally Sections 82A-101 to 82A-2103, R.C.M. 1947.)

Since each new executive department assumed the functions and duties of old departments and because each of the new departments received a new name, countless sections of the Revised Codes of Montana were amended by implication. Further, there were many sections of the codes which were no longer applicable or were made obsolete by the Act.

As a result, there was much left to be done after passage of the Act. The Executive Reorganization staff recommended that a thorough recodification of the laws affecting the reorganized departments be made, and proceeded to embark upon that task.

Since these terminal efforts of the Executive Reorganization staff would be primarily legislative in nature, the Chairman of the Legislative Council appointed a subcommittee of the Legislative Council to act as a liaison between the staff and the legislature during the interim. It was the Chairman's intent that the Executive Reorganization staff should utilize the subcommittee as a sounding board and make it possible for legislators to review the draft legislation as it was completed and keep them apprised of the efforts of the recodification.

Since the subcommittee performed a liaison and review function, and not a research function similar to other Legislative Council subcommittees, it was decided that subcommittee recommendations and findings would not be made. The purpose of this report is simply to recount the activities of the liaison committee and to indicate some of the problem areas that were encountered throughout the interim.

SUMMARY OF REVIEW PROCESS

One of the primary functions of the recodification was to make all the existing departmental names conform to the new agency names under the Act. The Act transferred the functions and duties of over 100 commissions, bureaus and agencies to the 19 new departments. This

resulted in the implied repeal of all language referring to the abolished agencies. The repeal was accomplished by inserting language at the end of the section creating the new department as follows: Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the old board or commission means the new board or commission.

However, since the compiler of statutes did not make the implied changes, it was necessary for Executive Reorganization staff to draft bills to change each section containing a reference to an abolished agency by inserting the new departmental name. The drafted bills would, in effect, only insert names of newly created departments and not change the substance of the existing laws.

Article V, Section 25 of the Montana Constitution, requires that ". . . no law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length." If this section were construed to apply to the renaming legislation, the executive reorganization bills would be considerably longer than those which simply amended the existing statutes by reference.

The Executive Reorganization staff recommended that each name change be made by referring to the Code section alone and that the entire section not be printed at length in the proposed bill. They estimated that a savings of $60,000 could be made if the short-form method were used. Further, it was the opinion of the Executive Reorganization attorneys that the short-form method in this particular case was not covered by the foregoing constitutional requirement. (The legal memo supporting this position is attached as Appendix A.)

At the request of the subcommittee, the Executive Reorganization staff submitted the question of the constitutionality of amending only the names by reference to the Attorney General (see Appendix B). In a letter opinion to the staff, the Attorney General held that ". . . the proposed method of substitution of the new name of a department for the old name of a board, bureau, commission or agency, without a change in duties, is not violative of Article V, Section 25, Constitution of Montana." (See Appendix C.)

Pursuant to the advice of the Attorney General, the subcommittee approved the "short-form" method of amendment and agreed that Executive Reorganization should proceed on that basis.

It was made clear by the Attorney General and agreed to by Executive Reorganization staff that only changes in nomenclature would be made by the "short-form" method. The substantive changes would all be made in accordance with Article V, Section 25.

The substantive changes to be made generally will involve modernization of archaic language, removal of statutes superseded by court or Attorney General opinions, and changes in administrative matters as recommended by the appropriate department. For example,

one of the purposes of the Act was to provide a system of central direction and control whereby the policies of the Governor and the legislature may be executed more directly and expeditiously. Contrary to this purpose, many sections of the existing statutes provide for lengthy administrative procedures, whereas other statutes simply vest the agency with power to set up its own procedures. Legislation to make administrative procedure more uniform will be submitted by Executive Reorganization.

In addition to the foregoing changes, relative to the new executive departments, executive reorganization will include a bill to remove the transitional language from the Act itself. The total bill drafting effort will include 19 bills (one for each new department) and the Act clean-up bill. It is estimated that each bill will contain approximately 100 pages, with the exception of the Act clean-up bill.

To supplement and assist in explanation of the changes, Executive Reorganization will include a summary of all the substantive changes and the reasons for making the changes. It was requested that the summary include an explanation for the repealed sections as well as the amended sections. It was the feeling of the subcommittee that legislators will be better able to pass on repealing legislation if they are apprised of the reason for the repeal.

Furthermore, Executive Reorganization assured that they intended to coordinate the recodification with the appropriate department head. For example, the staff spent a good deal of time with Commissioner Schwinden discussing each aspect of amendment to the statutes governing the Department of State Lands. The purpose, of course, is to obtain the concurrence of each department head with the proposed recodification of the laws affecting his department.

After each bill has been drafted, a copy will be distributed to each subcommittee member and to the Legislative Council for review. The bill will then be typed in final form, proofed, prefiled and preprinted.

The Executive Reorganization staff recommended that all of the bills be introduced, passed and made effective as soon after the session convenes so that any later changes with regard to an executive agency could refer back to the recodification. The subcommittee members were requested to sponsor the 20 bills. It was the intent of the Executive Reorganization staff that if each member of the subcommittee agreed to sponsor legislation, he would spend time in the appropriate department gathering information and background necessary for the successful passage of each bill. This decision would, of course, be left to individual members of the subcommittee. There were no commitments from subcommittee members at the adjournment of the final subcommittee meeting.

which is substantially idential with Article V, Section 25 of the Montana Constitution. The Michigan court said:

> . . . we do not understand that there was any attempt or intention thereby to revise, alter, or amend the provisions of the act of 1919. By the express terms of the 1921 enactment, the department of animal industry was abolished; and the powers and duties of that department were transferred to the state department of agriculture. The portion of Act 181 of the Pub. Acts of 1919 which prescribes these powers and duties was not 'revised, altered or amended.' It still stands as a part of the statutory law of the state, and therefore there was no occasion for the re-enactment or republication of that portion of the statute.

The Stimer case has been followed throughout the United States. The western states of California, Washington, and Wyoming have adopted the identical rule under constitutional provisions substantially identical to Montana's Article V, Section 25. Assets Reconst. Corporation v. Munson, 81 Cal. App. 2d 363, 184 P.2d 11; State vs. Yelle, 32 Wash. 2d 13, 200 P. 2d 467; Mahler vs. Tremper 40 Wash. 2d 405, 243 P. 2d 627; State vs. Pitet, 69 Wyo. 478, 243 P. 2d 177. The editor of the A.L.R. annotation of the Stimer case states:

> The transfer of authority and the corresponding duties from one officer or body, which has by previous enactment been intrusted with the same particular authority and duties, to a different officer or body, without at the same time making any change whatever in the authority and duties themselves, forms one of the clearest of all situations which have been dealt with in statutes which have been attacked as violating a constitutional requirement [like Article V, Section 25 of the Montana Constitution]. (67 A.L.R. 552,569).

The Montana Supreme Court, in Northern Pac. Ry. Co. v. Dunham, 108 Mont. 338, 90 P. 2d 506, struck down an act that purported to change the system of tax valuations wherever in the Codes a property tax was provided for. This was exactly what the constitutional provision was intended to prohibit, namely, laws that have no other purpose than to amend various statutes without re-enacting and publishing them at length.

If, however, an act is independent and complete within itself, the constitutional provision does not apply, even though it incidentally amends by implication other statutes. An example of such an act is the statute that was in question in the Stimer case, supra, or Montana's Executive Reorganization Act, Chapter 272, which has as its primary purpose the reorganization of the executive branch of state government, and thus is complete within itself, and only incidentally amends by implication other laws.

Since the amendments to existing statutes were actually made by Chapter 272 and there is no legal question of their validity under Article V, Section 25, the only question remaining is whether new legislation which changes only the form and nomenclature of the statutes must comply with Article V, Section 25.

That section applies to revisions and amendments. The Montana Supreme Court in Spratt vs. Helena Power Transmission Company, 37 Mont. 60, 94 P. 631, held that Article V, Section 25 applied only to a legislative act which " . . . is strictly amendatory or revisionary in its character."

The Montana Supreme Court has further held that amendments and revisions are only those acts which change the substance of existing law. In State vs. Leader Company, 97 Mont. 586, 37 P. 2d 561, the court said:

> An amendment is a legislative act designed to change some prior and existing law by adding to or taking from it some particular provision.

In State vs. Cooney, 70 Mont. 355, 225 P. 1007, the court said:

> Generally speaking, an amendment repeals or changes some provision of a pre-existing law or adds something thereto.

The Montana Court has defined "revision" in much the same way. In __ of Helena vs. Rogan, 27 Mont. 135, 69 P. 709, the court said:

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If, however, an act is independent and complete within itself, the constitutional provision does not apply, even though it incidentally amends by implication other statutes. An example of such an act is the statute that was in question in the Stimer case, supra, or Montana's Executive Reorganization Act, Chapter 272, which has as its primary purpose the reorganization of the executive branch of state government, and thus is complete within itself, and only incidentally amends by implication other laws.

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The Montana Court has defined "revision" in much the same way. In [illegible] of Helena vs. Rogan, 27 Mont. 135, 69 P. 709, the court said:

> . . . revision of statutes implies a reexamination of them. A revision is intended to take the place of the law as previously formulated. (Emphasis supplied).

The name changes contemplated by the proposed new legislation would not be either amendments or revisions as defined by the Montana Supreme Court. All of the changes in the existing sections of the law were made, and properly made, by Chapter 272 of the Laws of Montana, 1971, now Title 82A, R.C.M. 1947. The changes remaining to be made do not repeal or change the law as it stands after the enactment of Chapter 272, supra. They will not take the place of the law as previously formulated.

It is therefore clear that:

1. Chapter 272 of the Laws of Montana, 1971, now Title 82A, R.C.M. 1947, amended many existing statutes by implication and did so without conflict with Article V, Section 25;

2. Changes of names, titles, and nomenclature to make the form of existing statutes conform to the changes made by Chapter 272, Laws of 1971, are not amendments or revisions of existing law and therefore need not be drafted to comply with the restrictions of Article V, Section 25 of the Montana Constitution.

State of Montana
Office of The Attorney General
Helena 59601

March 20, 1972

ROBERT L. WOODAHL
ATTORNEY GENERAL

George L. Bousliman, Deputy Director
Executive Reorganization Office
State Capitol
Helena, Montana 59601

Dear Mr. Bousliman:

You have requested my opinion as to whether Article V, section 25, Constitution of Montana, requires that the recodification legislation re-enact and publish, at length, those sections of the code where the only changes to be made are the insertion of correct agency names to reflect the changes made by the Executive Reorganization Act of 1971.

In 1971 the forty-second session of the Montana legislature passed the Executive Reorganization Act, now Title 82A, Revised Codes of Montana, 1947, which created nineteen new executive departments of government and transferred to these new departments the powers and duties of over 100 separate boards, bureaus, commissions and agencies. Sections 82A-1401 and 82A-1402 (2), R.C.M. 1947, reflect the typical manner in which this was to be accomplished:

> "There is created a department of military affairs. The department head is the adjutant general of the state, who shall be appointed and serve in the same manner as are directors in section 82A-106 of this act. In addition, the qualifications of the adjutant general remain as prescribed in section 77-117, R.C.M. 1947." Section 82A-1401, supra.
>
> "... (2) The state civil defense agency, created in Title 77, chapter 13, R.C.M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state civil defense agency means the department of military affairs." Section 82A-1402, supra.

Although the Executive Reorganization Act of 1971 has effectively abolished a number of agencies, the names of abolished agencies still appear throughout the statutes.

Thus, the Revised Codes of Montana make reference to a defunct agency having certain powers and duties, when in fact the new department legitimately created under executive reorganization has these functions. To remedy this confusing situation, a substitution of the name of the new department for the name of the defunct agency, without a republication of the entire code section, has been proposed. The proposition would read as follows:

> "Section _____. Wherever the word 'commission' appears in sections _____, _____, and _____, the word 'department' is substituted therefor."

The question which then arises is whether such a contemplated manner of changing names would violate Article V, section 25, Constitution of Montana, which provides:

> "No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length."

In King v. Elling, 24 Mont. 470, 478, 62 Pac. 783, the Montana Supreme Court discussed the policy considerations behind such a constitutional provision:

> "... The object sought to be attained by the prohibition of the Constitution against amendments by reference to the title only of the act to be amended was to remedy a well-known evil. Many statutes were amended by merely striking out or adding words or phrases, the amendatory statute giving no intimation of the language of the statute so amended. To obviate the confusion and uncertainty consequent upon that mode of amendment, Section 25 of Article V of the Constitution requires that the statute as amended shall be re-enacted and published at length, ..."

In Spratt v. Helena Power Transmission Co., 37 Mont. 60, 94 Pac. 631, 635 (1908), the court reiterated essentially the same underlying rationale for the provision:

> "The purpose of the Constitution framers in adopting section 25 of Article V was to avoid certain formerly well-known legislative evils. Acts were passed amending existing statutes by substituting one word for another, or phrase for another, or by inserting or eliminating a clause or part of a sentence, without reference to the amended statute except by title. Thus vicious and unjust legislation was enacted by covert means, its real purpose and effect unforeseen. [Citations.] 'An opportunity was afforded for incautious and fraudulent legislation, and

APPENDIX B

EXECUTIVE REORGANIZATION OFFICE

ROOM 235 • STATE CAPITOL • HELENA • MONTANA • 59601

FORREST H. ANDERSON
GOVERNOR

CROWLEY
...LECTOR

GEORGE L. BOUSLIMAN
DEPUTY DIRECTOR

January 26, 1972

The Honorable Robert L. Woodahl
Attorney General
Capitol Building
Helena, Montana 59601

Dear Mr. Woodahl:

The Executive Reorganization Act of 1971 (Chapter 272, Laws of Montana, 1971; Title 82A, R.C.M. 1947) created nineteen new executive departments of government and transferred to these new departments the powers and duties of over 100 separate boards, bureaus, commissions, and agencies. As a result, there are now thousands of sections of the Revised Codes of Montana which make reference to agencies of government that have been abolished. The powers and duties of these former agencies were, in most cases, not changed in any particular but merely transferred in toto to the new departments. The Code sections remain in effect and are completely unchanged except for their references to agencies of government no longer in existence.

The abolition of the prior agencies and the transfer of functions in each case was accomplished by a general section delegating the powers and duties to a newly-created agency. Section 82A-1304, R.C.M. 1947, is typical of the provisions by which this change was accomplished:

> The livestock sanitary board, provided for in Title 46, Chapter 2, R.C.M. 1947, is abolished, and its functions are transferred to the board of livestock. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the livestock sanitary board means the board of livestock.

In order to delete references to abolished agencies from the Code and insert the correct names of the departments now exercising the functions, specific changes to the Code are being drafted by this office to change each section containing a reference to an abolished agency by inserting the correct name of the department created by Chapter 272. Examples of possible means by which this re-...dification can be accomplished are illustrated in "Appendix B" enclosed herein.

Article II, Section 25 of the Montana Constitution provides:

> No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length.

We request your opinion as to whether the above quoted constitutional provision requires that the recodification legislation re-enact and publish at length those sections of the Code where the only changes to be made in those sections are merely insertions of correct agency names to reflect the name changes already made by the Executive Reorganization Act.

It is estimated that if the recodification can be accomplished in the proposed manner, it would save the state approximately $60,000 through savings in the cost of typing, printing, proofing, collating, paper, and publication of the session laws.

Also enclosed is a copy of a memorandum written by our office on this question.

Sincerely yours,

WILLIAM F. CROWLEY, DIRECTOR

By:

GEORGE L. BOUSLIMAN
Deputy Director

WFC:mmc

Enclosures

Proposed Method #1:

Section_____. Wherever the word "commission" appears in sections 87-103, 87-104, and 87-105, R.C.M. 1947, the word "department" is substituted therefor.

Proposed Method #2:

Section_____. Sections 87-103, 87-104, and 87-105, R.C.M. 1947, are not amended or revised. Wherever the word "commission" appears in those sections, the compiler of the Revised Codes of Montana shall substitute the word "department" in order that the agency name changes made by the Executive Reorganization Act of 1971 are accurately reflected in those sections.

(Appendix B of Mr. Crowley's letter to the Attorney General)

> endless confusion was introduced into the law. Legislators were often deceived, and the public imposed upon by such modes of legislation.' [Citations.] ... This section was not intended to embarrass the legislature in the discharge of its lawmaking functions, but, on the contrary, it was intended only as a means to secure a fair and intelligent exercise thereof. [Citations.] So, if the real purpose and meaning of the Act be apparent on its face, and if the legislators and others be given true direction to the subject and purpose of the proposed enactment, the constitutional mandate is satisfied. ..."

It does not appear that the proposed manner of changing the names of various departments would violate the purpose of the constitutional restriction. The purpose of the proposed legislation is to accomplish nominally that which has already been accomplished substantively. The powers and duties of the boards, bureaus and agencies have been transferred by adoption of the Executive Reorganization Act; the proposed legislation merely transfers the appropriate names to the existing powers and duties. It would appear that the legislators are being given true direction as to the subject and purpose of the proposed enactment.

Furthermore, such a provision is to be construed liberally so long as the underlying policy rationale is not violated. As stated in Northern Pac. Ry. Co. v. Dunham, 108 Mont. 338, 341, 90 P.2d 506 (1939):

> "... On the other hand, since the constitutional provisions are to be given a reasonable and liberal construction and are applicable only when construed according to the spirit of their restrictions, and in the light of the evil to be suppressed, it has been uniformly held that the constitutional prohibitions apply only to laws which are strictly amendatory or revisory in their character and which are usually unintelliglble without reference to the former statute to express amendments only."

The use of the term "strictly amendatory" indicates that an amendment must be of a substantive nature in order to fall within the purview of the constitutional prohibition. An Idaho case, Gilbert v. Moody, 25 Pac. 1092, 1093, substantiates this proposition. In that case, the defendant alleged that an act of the Idaho legislature, amending the Revised Laws of Idaho by changing the word "territory" to "state" and "comptroller" to "auditor", was in violation of the constitutional provision which provided: "No act shall be revised or amended by mere reference to its title; but the section as amended shall be set forth and published at length." The Idaho court responded to that allegation in the following manner:

> "The object of this provision is to prevent obscurity,

> endless confusion was introduced into the law. Legislators were often deceived, and the public imposed upon by such modes of legislation.' [Citations.] ... This section was not intended to embarrass the legislature in the discharge of its lawmaking functions, but, on the contrary, it was intended only as a means to secure a fair and intelligent exercise thereof. [Citations.] So, if the real purpose and meaning of the Act be apparent on its face, and if the legislators and others be given true direction to the subject and purpose of the proposed enactment, the constitutional mandate is satisfied. ..."

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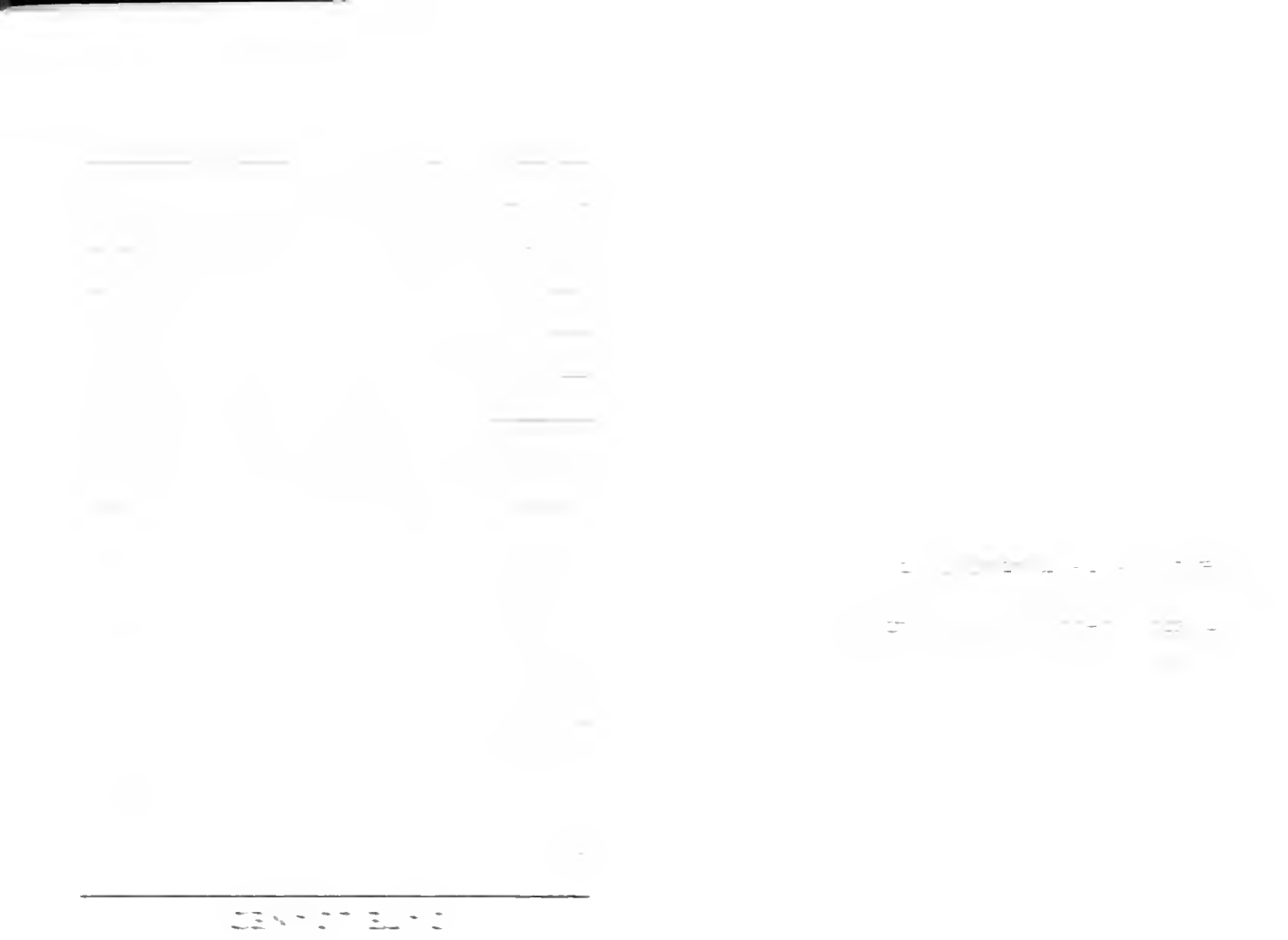

> confusion, and uncertainty of the laws. This section deals with such amendments of existing legislation as change the application, force, or effect of an act or a portion thereof. The amendments referred to do not change the application, force, or effect of the sections amended, but merely change the words 'territory,' 'state,' and 'comptroller' to 'auditor.' These amendments cannot result in any ambiguity or uncertainty, nor can anyone be misled as to the purpose of these amendments. To hold that each section, so amended, should be published at length would be an unreasonable construction of said provision, and entail needless expense upon the people. ..."

Additional Montana cases lend credence to this interpretation. State ex rel. Nagle v. Leader Co., 97 Mont. 556, 37 P.2d 581, 583, (1934), stated: "An 'amendment' is a legislative act designed to change some prior and existing law by adding to or taking from it some particular provision." (Emphasis supplied.) In State ex rel. Corry v. Cooney, 70 Mont. 355, 225 Pac. 1007, 1009 (1924), the Montana Supreme Court found:

> "In legislative parlance 'amendment' is an alteration or change of something proposed in a bill or established as law. ... A statute which adds a provision to a section or an existing statute is an amendment. ... Generally speaking, an amendment repeals or changes some provision of a pre-existing law or adds something thereto. ..."

The proposed method of substituting the name of the actual department for an old name that has no validity since executive reorganization is not a change in the law; rather, it is a change in nomenclature to reflect a change that has already occurred.

Therefore, it is my opinion that the proposed method of substitution of the new name of a department for the old name of a board, bureau, commission or agency, without a change in duties, is not violative of Article V, section 25, Constitution of Montana.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

SLW:cm

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MADE IN U.S.A.